RATNAWATI HASBI MOHAMAD SULEIMAN v. SUPERINTENDENT OF LAND AND SURVEY DEPARTMENT, KUCHING DIVISIONAL OFFICE & ANOR

HIGH COURT SABAH & SARAWAK, KUCHING
ALWI ABDUL WAHAB JC
[SUIT NO: KCH-21NCvC-10-9-2014]
29 FEBRUARY 2016

LAND LAW: *Acquisition of land – Award of compensation – Land purchased by land owner with notice of Minister's declaration under s. 48 of Land Code (Sarawak) (Cap 81) – Whether compensation to be based on market value of land as at date of publication of s. 48 declaration – Failure to notify land owner of first inquiry and award of compensation – First inquiry conducted in absence of land owner – Whether second inquiry without revoking first resumption process created duplicity – Whether land owner suffered loss and damages*

LAND LAW: *Acquisition of land – Inquiry – Inquiry pursuant to Memorandum of Declaration of Resumption of Land – Land subject to Minister's declaration under s. 48 of Land Code (Sarawak) (Cap 81) – Failure by land authority to notify land owner of inquiry – First inquiry conducted in absence of land owner – Whether s. 48 declaration lapsed and extinguished upon completion of first resumption process – Whether fresh s. 49 notice based on earlier s. 48 declaration could be issued to carry out second resumption process*

The plaintiff was the registered owner of the land which she purchased in 2011 for a total consideration sum of RM1.5 million. The plaintiff claimed against the first defendant, the Superintendent of Lands and Surveys Department, Kuching and second defendant, the State Government of Sarawak, for negligence and nuisance arising from the first defendant's action in removing the plaintiff's name from the Register of Title after a parcel of land belonging to the plaintiff was acquired by the State Government for a public purpose. It was the plaintiff's case that the first defendant was negligent in registering the Memorandum of Declaration of Resumption *vide* Instrument No L679/2012 ('the first resumption process') to cause the land to be resumed to the State Government on 9 January 2012. In acquiring the land to be resumed to the State Government, the first defendant had served the notice pursuant to s. 49 of the Land Code (Sarawak) (Cap 81) ('the Land Code') to the wrong address resulting in failure of service of the notice on the plaintiff. Therefore, the inquiry ('first inquiry') was conducted in the plaintiff's absence. The award, in the sum of RM811,693.89, arising out of the first enquiry was also never made known or served onto the plaintiff. Upon discovering that the land was no longer registered in her name, the plaintiff wrote a letter of complaint to the first defendant. Subsequently, the first defendant served a fresh s. 49 notice to inform the plaintiff of the second

inquiry. A private land search by the plaintiff showed that the ownership of the land was changed from the State back to the plaintiff. On 11 November 2013, the first defendant issued and served the second award to the plaintiff and issued the compensation payment of RM811,693.89 which the plaintiff accepted under protest. It was the plaintiff's contention, *inter alia*, that (i) the first defendant could not transfer the land back to the plaintiff after the first resumption process and after receiving the complaint by the plaintiff without going through the necessary statutory process of re-alienation of an alienated land back to the plaintiff pursuant to s. 15A and/or s. 13 of the Land Code; (ii) the first defendant was wrong in law to issue a fresh s. 49 notice based on the earlier s. 48 declaration of the Land Code gazetted on 2 July 2009 which was already deemed extinguished on 9 January 2012 after the first resumption process; and (iii) the first defendant could not register a second Memorandum of Declaration of Resumption affecting the same parcel of land without revoking the first resumption process and therefore, the two instruments created the duplicity of awards.

Held (dismissing plaintiff's claim with costs):

(1) The root of all the claims boiled down to the unsatisfactory amount of compensation awarded to the plaintiff which was less than RM1.5 million that she had paid to purchase the land. At the time of the purchase, the plaintiff was fully aware that the land was subject to the Minister's declaration under s. 48 of the Land Code. Hence, the first defendant could not be blamed for the loss of investment suffered by the plaintiff, having taken the risk in proceeding to purchase the land knowing that it could be acquired by the State Government for public purpose and the amount to be paid in the event of such acquisition would be based on the market value of the land as at the date of the publication of the s. 48 declaration as assessed by the Government valuer. (paras 18 & 19)

(2) Section 60(1) of the Land Code provides that the amount of compensation to be awarded for land resumed shall be its market value at the date of the posting of the declaration under s. 48 if no notification under s. 47 has been published. The market value of the land as at the date of s. 48 declaration was RM810,000. There was no evidence to show that the first defendant's valuation of the market value of the subject land as at the date of publication of s. 48 notice was inaccurate or inadequate. Neither was there any evidence that the plaintiff had ever obtained a professional valuation of the land as at the date of the publication of s. 48 when she bought the land in 2011. (paras 20 & 21)

(3) It was not correct for the plaintiff to contend that s. 48 declaration was extinguished or exhausted when the first resumption process was completed. The Memorandum of Declaration of Resumption of Land showed that only 33 parcels of land out of 152 were declared as having

been taken possession of by the State Government. There were still many other parcels of land which were yet to be acquired under the same s. 48 declaration. Further, there was nothing in the Land Code which provides that s. 48 declaration would lapse upon the completion of the resumption of the land to the State Government. (para 22)

(4) The declaration under s. 48 for the resumption of land was in no way under the purview of the first defendant but the Minister, who was not a party in this case. Thus, the alleged 'negligent act' of the first defendant had no direct bearing on the land being resumed by the State Government under s. 48 declaration. The alleged negligent act, which arose from the failure of the first defendant to ensure proper service on the plaintiff of the notice of inquiry and the subsequent award due, if any, was not the cause for the subject land to be resumed by the State Government. The issue of the resumption of land and insufficient amount of compensation award were the main subject matter of the complaint which must be distinguished from the issue of the first defendant's negligent act. In any event, the first defendant did not owe any duty of care to the plaintiff in regard to the decision or declaration of the Minister on the resumption of her land by the State Government and any alleged loss arising therefrom. (paras 25 & 26)

(5) The complaint that the plaintiff had not been issued with the notice was remedied by the first defendant when a second inquiry was held to accord the plaintiff the opportunity to present her case for adequate compensation. The inquiry was attended to by the plaintiff and an award of compensation was made by the first defendant which was duly received by the plaintiff under protest. The proper forum to deal with the plaintiff's grief of inadequate compensation should be by way of land reference proceedings. (para 27)

Case(s) referred to:

Superintendent of Lands & Surveys, Fifth Division, Limbang v. Lim Teck Hoo & Anor [1979] 1 LNS 103 FC ***(refd)***

Legislation referred to:

Land Code (Sarawak) (Cap 81), ss. 13, 15A, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 60(1), 61, 79

For the plaintiff - William Ding; M/s William Ding & Co, Advocs
For both defendants - JC Fong & Evy Liana; State Attorney General's Chambers, Sarawak

Reported by S Barathi

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JUDGMENT

Alwi Abdul Wahab JC:

Introduction

[1] This is the plaintiff's claims against the first and second defendants for
B negligence and nuisance arising from the first defendant's action in removing the plaintiff's name from the Register of Title after a parcel of land known as Lot 582, Block 6, Matang Land District containing an area of 2.02500 hectares ("the subject land") was acquired by the State Government for a public purpose, ie, for the Flood Bypass Project from Sungai Sarawak to
C Batang Salak in Kuching area. The plaintiff is also seeking various declaratory orders as a result of the alleged impropriety conduct of the first defendant.

[2] The plaintiff (Ratnawati binti Hasbi Mohamad Suleiman) is the registered owner of the subject land after she purchased it from the previous
D co-proprietors (Agatha Cheong Siew Teng and Mary Ling Moi Moi) for a total consideration sum of RM1.5 million on 1 August 2011.

[3] The first defendant is the Superintendent of Lands and Surveys Department, Kuching, who had carried out the resumption process affecting the subject land. The second defendant is the Government of Sarawak State
E and the employer and/or the principal of the first defendant.

The Facts

[4] The plaintiff who was and is currently residing in Doha, Qatar had bought the subject land for the purpose of her investment in her homeland.
F Through her brother-in-law Dzamaluddin bin Zainuddin (PW2), she discovered that the subject land is no longer registered in her name as it had been resumed to the State Government on 9 January 2012. This information was told to PW2 by the counter staff at Kuching Land Office when PW2 wanted to pay for the quit rent of the subject land on behalf of the plaintiff
G in 2013.

[5] The plaintiff had no knowledge of the registration of the memorandum of declaration of resumption *vide* instrument no. L679/2012 dated 9 January 2012 ("first resumption process") as the first defendant's letter to notify the plaintiff prior to the resumption was sent to the plaintiff's wrong
H address. The plaintiff's correct address is Lot No. 336 Jalan Abang Ateh, Kuching but in the present case, the letter was sent to No. 366 Jalan Abang Ateh. In the absence of the plaintiff during the inquiry, the first defendant awarded her the compensation sum of RM811,693.89 *vide* the award no. 293/2011 ("first award").

I

[6] The plaintiff through Messrs William Ding & Co. Advocates wrote a letter dated 2 September 2013 to the first defendant to officially complaint the action of the first defendant in causing the plaintiff's land to be resumed to the State Government without her notice or knowledge in contravention of the mandatory statutory provisions under the Sarawak Land Code ("Land Code").

[7] As a result of the plaintiff's letter, the first defendant then served a fresh s. 49 notice under the Land Code to inform the plaintiff of the second inquiry which was held on 24 October 2013. The said inquiry was attended by the plaintiff together with her lawyer and a professional private valuer. On the same date, a land search was also done by the plaintiff through Messrs William Ding & Co Advocates and they had found out that the ownership of the land was changed from the State back to the plaintiff's name as shown in the first defendant's registry data system.

[8] On 11 November 2013, the first defendant issued and served the award no. 420/2013 ("second award") to the plaintiff and the memorandum of declaration of resumption *vide* instrument no. L.202/2014 affecting the subject land to resume to the State was registered on 5 January 2014 ('second resumption process'). Thereafter, the first defendant issued compensation payment by way of cheque amounting to RM811,693.89 to the plaintiff which she accepted under protest.

The Plaintiff's Case

[9] It is the plaintiff's contention that the first defendant was negligent in registering the memorandum of declaration of resumption *vide* instrument no. L679/2012 to cause the subject land to be resumed to the State Government on 9 January 2012 and such action by the first defendant without the knowledge of the plaintiff had caused the plaintiff to suffer loss and damages.

[10] The plaintiff further submitted that in acquiring the subject land to be resumed to the State Government, the first defendant has failed to serve a notice pursuant to s. 49 of the Land Code. The inquiry conducted by the first defendant on 25 October 2011 pursuant to s. 51 of the Land Code was also held in the absence of the plaintiff. As a result, the award no. 293/2011 arising out of that inquiry on 25 October 2011 was never made known or served onto the plaintiff.

[11] The plaintiff further contended that the first defendant cannot transfer the subject land back to the plaintiff after the first resumption process and after receiving the complaint by the plaintiff's counsel without first going through the necessary statutory process of re-alienation of an alienated land back to the plaintiff pursuant to s. 15A and/or s. 13 of the Land Code.

[12] The plaintiff also contended that the first defendant is wrong in law to issue a fresh s. 49 notice based on the earlier s. 48 declaration of the Land Code gazetted on 2 July 2009 which was already deemed to be extinguished on 9 January 2012 after the first resumption process.

[13] The plaintiff further contended that the first defendant could not register a second memorandum of declaration of resumption *vide* instrument no. L.202/2014 ("second resumption process") affecting the same parcel of land without first revoking the earlier memorandum of declaration of resumption *vide* instrument no: L679/2012 ("first resumption process"). Thus, the two instruments of memorandum of declaration of resumption created the duplicity of awards.

The Defendants' Case

[14] It is the defendants' contention that the subject land was purchased by the plaintiff after the Minister's declaration under s. 48 of the Land Code certifying that the subject land was needed for the public purpose which was gazetted *vide* G.N 2624 dated 2 July 2009.

[15] It is the defendants' further contention that the plaintiff had signed a declaration that she was aware that the subject land was subject to the said s. 48 declaration at the time when she purchased the subject land.

[16] The defendants also contended that the compensation of RM811,693.89 paid to the plaintiff is the market value of the subject land as at the date of s. 48 declaration and as assessed by the Government's valuer ie, Haslinda binti Hamdan (DW1).

The Findings Of The Court

[17] The plaintiff argued that first defendant was negligent for failure to comply with the mandatory statutory procedural provisions of the Land Code namely ss. 49, 51, 52, 53 and 54 in causing the plaintiff's land to be resumed to the State on 9 January 2012 in the first resumption process as well as the wrong procedures adopted by the first defendant during the second resumption process.

[18] In my view, the root of all these claims boils down to the unsatisfactory amount of compensation awarded to the plaintiff which is less than RM1.5 million she paid to purchase the said subject land. This can be clearly seen from the plaintiff's own evidence in that she had loss all her investment costs as a result of the unlawful and negligent act committed by the first defendant. The relevant parts of the plaintiff's claim as stated in her witness statement WSPW4 are reproduced below:

Paragraph 25(i) of Exhibit WSPW4

> I bought the 2.0250 hectares of the said land sometime in August 2011 using my husband's hard earned money in the total sum of Ringgit Malaysia 1.5 million. I could not believe that my whole investment simply disappear just like that. Secondly, I could not believe that the State 10 can just simply acquire people's land without informing the land owner. This kind of happening really shocked me.

Paragraph 25(v) of Exhibit WSPW4

> … I paid RM1.5 million for the land in August 2011 and the 1st Defendant who forced through his inquiry came out with his unreasonable Award of RM811,693.89. Because of the unlawful act committed by the 1st Defendant, I have lost substantial amount of my investment in the sum of RM688,306.11. Because of the unlawful act committed by the 1st Defendant, I want this Court to grant me the sum of RM 688,306.121 which I am being made to suffer.

[19] In my view, the first defendant could not be blamed for the loss of investment suffered by the plaintiff because as rightly pointed out by counsel for the defendants, the plaintiff is fully aware that the land in question is subject to s. 48 at the time when she purchased it. What this means is that the plaintiff ought to have taken the risk when she proceeded to buy the subject land although she knew that the subject land could be acquired by the State Government for public purpose and the amount of compensation to be paid in the event of such acquisition ought to be based on the market value of the subject land as at the date of the publication of s. 48 declaration as assessed by the Government's valuer.

[20] It is by the plaintiff's own admission that the market value of the subject land in 2009 *via* Minister's declaration under s. 48 of the Land Code may not be the same as its market value in 2011. However, in the present case, there is no evidence that the plaintiff had ever obtained a professional valuation of the subject land on the market value thereof as at the date of the publication of s. 48 declaration when she bought the subject land in 2011. If there is any injustice, it was only caused by the plaintiff's own self for agreeing to pay a consideration of RM1.5 million which is more than the market value of the subject land without obtaining the market value of the subject land as at the date of the publication of s. 48 declaration.

[21] Section 60(1) of the Land Code clearly provides that the amount of compensation to be awarded for land resumed shall be its market value at the date of the posting of the declaration under s. 48 if no notification under s. 47 has been published. It was held as such in the case of *Superintendent of Lands & Surveys, Fifth Division, Limbang v. Lim Teck Hoo & Anor* [1979] 1 LNS

103; [1980] 1 MLJ 58. In addition, that case further held that where both notification and declaration are issued, the earlier date must be taken as the date in determining the compensation. In the present case, there is no such notification under s. 47 issued and the plaintiff's pleaded case is not based on s. 47 notification. Based on the assessment of DW1, the market value of the subject land as at the date of s. 48 declaration is RM810,000 which is at RM400 psm (RM161,877.78 per acre). There is no evidence adduced by the plaintiff to show that the first defendant's valuation of the market value of the subject land as at the date of publication of s. 48 was incorrect or inadequate.

[22] On the plaintiff's contention that s. 48 declaration had lapsed and extinguished once the first resumption process is completed and the first defendant could not issue fresh s. 49 notice again based on the current s. 48 to carry out the second resumption process, I disagree because this s. 48 declaration does not only cover the subject land but a total of 152 parcels of land as shown in the *Gazette* notification (exh. D3). The memorandum of declaration of resumption of land (exh. D1) also shows that only 33 parcels of land out of the 152 were declared as having been taken possession of by the State Government. In such a case, it is not correct that s. 48 declaration extinguished or exhausted when the first resumption process had been completed as in the present case since there are still many other parcels of land which are yet to be acquired under the same s. 48 declaration. Furthermore, there is nothing in the Land Code which provides that s. 48 declaration would lapse upon the completion of the resumption of the land to the State Government.

Whether The First Defendant Is Negligent

[23] The subject land was acquired by the State pursuant to a declaration by the Minister under s. 48 of the Land Code for the specified public purpose and the said declaration is valid unless withdrawn by the Minister under s. 79 of the same. The declaration under s. 48 for the resumption of the subject land was in no way under the purview of the first defendant but the Minister who is not a party in this case.

[24] I agree with the defendants' submission that as a Superintendent, the first defendant's duty only commences after the declaration by the Minister under s. 48 of the Land Code. The duties imposed on the first defendant are provided for under Part IV of the Land Code particularly to ensure that compensation is paid to the plaintiff and to be assessed in accordance with ss. 60 and 61 of the Land Code. These duties in ss. 49, 50, 51, 52, 56 and 57 of the Land Code relate primarily to giving notice to the plaintiff of the process of the resumption of her land, notifying her of her rights to state her interests and submit claims for compensation, conducting an inquiry to

determine her claim for compensation, to make an award of compensation and if the award is challenged, to submit the matter to the High Court for determination on the adequacy of his award if so required by the aggrieved landowner.

[25] The alleged negligent act of the first defendant by the plaintiff arose from the first defendant's failure to ensure that the plaintiff was properly served with the notice of the inquiry and the subsequent award due to the wrong address used by the first defendant. In my view, the alleged negligent for failure to notify the plaintiff on the date of inquiry if any is not the cause for the subject land to be resumed by the State Government. The issue of the resumption of the plaintiff's subject land pursuant to s. 48 declaration of the Minister and the insufficient amount of the compensation award are the main subject matter of the complaint which must be distinguished with the issue regarding the alleged negligent act of the first defendant.

[26] In my view, the alleged "negligent act" of the first defendant had no direct bearing on the subject land been resumed by the State Government under s. 48 declaration. In any event, the first defendant does not owe any duty of care to the plaintiff in regard to the decision or declaration of the Minister on the resumption of her land by the State Government and any alleged loss arising therefrom.

[27] Insofar as the complaint of not being issued with the notice is concerned, this was remedied by the first defendant when a second inquiry was held to accord the plaintiff the opportunity to present her case for adequate compensation. The said inquiry was attended by the plaintiff together with her lawyer and a professional private valuer. An award of compensation was made by the first defendant following the inquiry after hearing from the plaintiff and her lawyer. The sum awarded was paid to and duly received by the plaintiff under protest. In my view, the proper forum to deal with the plaintiff's grief of inadequate compensation of award should be by way of land reference to court to determine whether the amount of compensation awarded to the plaintiff is adequate or otherwise.

Conclusion

[28] Based on the above consideration, the plaintiff's claim is dismissed with cost of RM20,000 to the defendants.